

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	Conf. No.:	9868
Gregory Edward Tierney	§		
Serial No.:	§	Examiner:	Mardochee Chery
10/760,652	§		
Filed:	§	Art Unit:	2168
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For:	§	Docket:	200313614-1
System and Method for Creating Ordering Points	§		(HPC.1047US)

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**REPLY BRIEF**

Sir:

The following provides Appellant's Reply to the Examiner's Answer dated October 14, 2010.

**I. REPLY TO EXAMINER'S ANSWER REGARDING CLAIM 1**

In the Appeal Brief, Appellant argued that neither Cypher nor Hum teaches or suggests a first node that associates an F-state with a copy of data in response to receiving the copy of the data from memory and receiving non-data responses from other nodes, as required by claim 1. In responding to this argument, the Examiner's Answer contends that both Cypher and Hum disclose an F-state. *See Answer, pp. 16-17.* However, even if Cypher and Hum do disclose an F-state (which Appellant does not believe they do), neither Cypher nor Hum discloses or suggests a node that provides a broadcast request for data and then associates an F-state (or any other state) with a copy of the requested data in response to both receiving the copy of the

requested data from memory and receiving non-data responses from other nodes. *See Appeal Brief*, pp. 11-12.

Nonetheless, the Examiner's Answer contends that paragraph [0068] of Cypher discloses receipt of non-data responses by a home agent in response to a coherency request and that this disclosure allegedly comprises receipt of non-data responses in response to a broadcast request for data. *See Answer*, at p. 17. However, the scenario described in paragraph [0068] of Cypher does not employ a broadcast protocol to request data, as required by claim 1, but instead is directed toward use of a directory-based protocol that employs point-to-point data requests. In Cypher's scenario, the requestor transmits the request to only a home agent using the point-to-point protocol. Although Cypher's requestor receives the requested data from the home agent (or from an owning agent in response to a demand from the home agent), the requestor does not also receive non-data responses from other nodes indicating that at least a second node includes a shared copy of the data, as also required by claim 1. Thus, neither Cypher's requesting agent nor Cypher's home agent satisfies the requirements of the first node recited in claim 1. That is, with respect to the requesting agent, it employs a point-to-point request (rather than a broadcast request) and does not receive non-data responses from other nodes. Thus, the requesting agent cannot associate an F-state with the received data in response to receipt of such responses, as required by claim 1. With respect to the home agent, at a minimum, the home agent does not associate any state with data and, as such, whether the home agent receives or does not receive non-data responses is irrelevant.

The Examiner's Answer attempts to compensate for these deficiencies of Cypher by ignoring express limitations recited in claim 1. More particularly, the Examiner's Answer contends that it can ignore claim 1's requirement that the first node provide a source broadcast

requesting data because the limitation is merely a functional recitation. It is respectfully submitted that the Answer's failure to consider the claimed limitation on this basis is clear legal error.

All words of a claim must be considered. As held by the Federal Circuit, functional language may properly be used in an apparatus claim. *Microprocessor Enhancement Corporation v. Texas Instruments, Inc.*, 520 F.3d. 1367, 1375, 86 USPQ 2d 1225 (Fed. Cir. 2008). In fact, the court in *Microprocessor Enhancement* specifically reversed a district court's finding that functional language in an apparatus claim could be ignored. *Id.* at 1374. This finding of *Microprocessor Enhancement* is consistent with the finding of another Federal Circuit decision, which held that a patent applicant is free to recite features of an apparatus either structurally or functionally. *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ 2d 1429 (Fed. Cir. 1997). As stated by *In re Schreiber*, there is nothing intrinsically wrong with defining something by what it does rather than what it is in drafting patent claims. *Id.*

Here, the first node recited in claim 1 is defined by what it does. Specifically, the first node is operative to provide a source broadcast request for data and then associates an F-state with a copy of the data in response to receiving the copy of the data (which was requested by providing a source broadcast). The scenario described in paragraph [0068] of Cypher does not employ a source broadcast for data. Thus, this excerpt from Cypher does not disclose the first node recited in claim 1. Whether Cypher acknowledges that a node could employ a broadcast request does not alter the fact that the requesting node in paragraph [0068] does not broadcast its request but instead provides a point-to-point request for the data. Simply put, when all the words of claim 1 are considered (which they must be), neither Cypher nor Hum, alone or in combination, teaches or suggests a first node that operates in the manner recited in claim 1.

Not only does the Examiner's Answer fail to establish that the proposed combination of Cypher and Hum teaches or suggests all of the limitations recited in claim 1, but the Examiner's Answer also provides no substantive response to Appellant's argument regarding the lack of showing of a valid reason that would have led the skilled artisan to combine Cypher and Hum in the proposed manner. Here, the Answer devotes over two pages to a recitation of the law of obviousness but fails to reply to the specific argument that was set forth in the Appeal Brief. More particularly, the Examiner has stated that the skilled artisan would have been led to modify Cypher to include an F-state "because this would have permitted a shared data to be transmitted from the current owning system component to the requested system component without any concern of multiple data copies received at the requesting system component." *See Answer*, at p. 4. However, as previously noted at pages 12-13 of the Appeal Brief, Cypher does not have this problem because the specific implementation in Cypher on which the Examiner has relied in formulating the rejection uses a directory based, point-to-point protocol to request data. When a point-to-point request for data is provided, there is no concern that multiple data copies will be received at the requesting system component. Given that the concern presented by the Examiner does not exist in Cypher's specific implementation, it is respectfully submitted that the reason provided by the Examiner for modifying Cypher is not valid. Rather than address this issue, the Examiner's Answer instead has elected to ignore the fact that claim 1 expressly requires that the node provide a source broadcast requesting the data. This approach of ignoring claim limitations is clear legal error.

In view of the foregoing, the Examiner's continued insistence that (1) the proposed combination of Cypher and Hum teaches or suggests all of the limitations of claim 1, and (2) a valid reason exists that would have led the skilled artisan to modify Cypher with Hum's

teachings in the proposed manner constitutes clear legal error. Accordingly, because of the legal error, the rejection of claim 1 and its dependent claims should be reversed.

**II. REPLY TO ANSWER'S ALLEGATION THAT APPELLANT HAS MISCONSTRUED THE TEACHINGS OF CYPHER**

Throughout the Examiner's Answer, the Examiner contends that Appellant has misconstrued Cypher allegedly "because throughout the entire disclosure, Cypher repeatedly makes it clear that his invention deals with both broadcast and point to point transactions." *See, e.g.*, Answer, at pp. 24, 25, 33, 34, 35, 37, 40, 41. Appellant does not dispute that Cypher discloses both broadcast and point-to-point protocols. However, in formulating the rejection of those claims which expressly require a broadcast request for data, the Examiner has attempted to apply a specific implementation disclosed in Cypher that employs a point-to-point request for data. This is clear error. Moreover, the fact that Cypher's home agent may multicast invalidate demands to the other clients is irrelevant. *See, e.g.*, Answer, at p. 24. Regardless of whether a multicast may be considered a broadcast, an invalidate demand is not a broadcast request for data, as required by the claims. Accordingly, it is submitted that the Answer's repeated insistence that the specific implementation disclosed in paragraph [0068] of Cypher is applicable to a broadcast request for data is clear error.

In view of the foregoing, it is submitted that the rejection of claims 1-13, 17-18, and 20-35 (each of which require a broadcast request for data) is clearly erroneous and should be reversed.

**III. REPLY TO EXAMINER'S ANSWER REGARDING CLAIMS 16 AND 22**

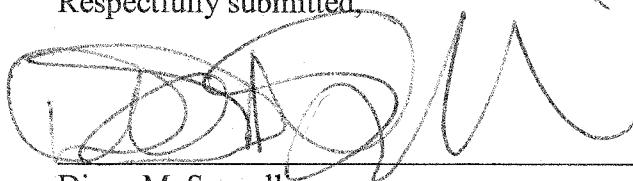
In the Appeal Brief, Appellant explained the basis for its argument that the Examiner had failed to provide a valid reason that would have led one skilled in the art to modify the teachings of Cypher, Hum and Arimilli with the teachings of Hum 2. *See* Appeal Brief, p. 27. It is noted

that the Examiner's Answer provides no answer to Appellant's argument in this regard and, thus, should be considered nonresponsive. In view of the unrebutted argument that the rejection of claims 16 and 22 is clearly in error, the rejection of claims 16 and 22 should be reversed.

#### IV. CONCLUSION

For the foregoing reasons, and for the reasons stated in the Appeal Brief, reversal of the final rejection of all claims is respectfully requested.

Respectfully submitted,



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